

## **Limited Liability Companies (LLCs) Electing to be Taxed as S Corporations Subject to Franchise Tax**

G.S. 105-114(b)(2) was amended in 2006 to include in the definition of “corporation” a Limited Liability Company (LLC) that elects to be treated as a C Corporation. The purpose of the change was to close a loophole that permitted an entity to elect corporate status for federal income tax purposes but at the same time avoid the franchise tax liability imposed under G.S. 105-122. By specifying “C Corporation”, the statute left open the possibility for a LLC to elect S Corporation status for federal purposes and continue to avoid the franchise tax liability. To close this loophole, the definition was further amended in 2008 to replace the reference to “C Corporation” with “corporation”, which also includes S Corporations. The amendment is effective for taxable years beginning on or after January 1, 2009. Because the general business franchise tax imposed in G.S. 105-122 is for the tax year in which the tax becomes due, this amendment impacts the franchise tax reported on the 2008 S Corporation franchise tax return since it is due on or before April 15, 2009.

G.S. 105-122.1 was amended in 2006 to allow LLCs subject to franchise tax a credit equal to the difference between the annual report fee imposed on LLCs and the annual report fee on corporations. The fee for LLCs filing an annual report is \$200.00. Effective September 1, 2007, the fee for corporations filing annual reports in paper form with the Department of Revenue increased to \$25.00. The allowable credit is the difference between the annual report fee the limited liability company is required to pay and the annual report fee that a corporation pays if it files a paper report. Thus, an LLC taxed as a corporation and subject to franchise tax is allowed a credit of \$175.00.

An LLC may claim the credit for “Additional Annual Report Fee Paid” on the 2008 Corporate Tax Summary, Form CD-425, Part 1, Line 5.